

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-35381 October 31, 1972

TLG INTERNATIONAL CONTINENTAL ENTERPRISING, INC., petitioner,

vs.

HON. DELFIN B. FLORES, Presiding Judge, Court of First Instance of Rizal, Branch XI, respondent.

L. V. Simbulan, Tiongson and Associates for petitioner.

Respondent Judge in his own behalf.

RESOLUTION

ANTONIO, J.:^p

Petition for *certiorari* to set aside the orders dated June 23, 1972 and July 15, 1972 in Civil Case No. 14880 of Respondent, Hon. Delfin B. Flores as the Presiding Judge of the Court of First Instance of Rizal, Branch XI, denying the motion of petitioner to withdraw the sum of P3,750.00 deposited by it, by way of consignment.

This Court after considering the allegations contained and the issues raised in the petition and the "manifestation" of Respondent admitting the facts therein alleged, resolved to give due course to the petition, and treat the "manifestation" of Respondent, as his answer. As the issue involved is of minor importance, and the interest of the parties could be better served by an expeditious resolution thereof ... We dispensed with the filing of briefs or memoranda and considered the case as submitted for decision.

Respondent in an order dated October 5, 1971, granted petitioner's "Motion To Intervene" and admitted its "Complaint In Intervention", in Civil Case No. 14880, (Bearcon Trading Co., Inc. vs. Juan Fabella Et Al) of the Court of First Instance of Rizal, Branch XI. The aforesaid case was an action for declaratory relief involving the rights of Bearcon Trading Co., Inc. as lessee of the premises of the aforesaid defendants. Petitioner intervened as sub-lessee of Bearcon over the property, and the purpose of its intervention was to protect its rights as such sub-lessee and to enable it, during pendency of the case, to make a consignment of the monthly rentals as it was "at a loss as to who is lawfully and rightfully entitled to receive payments of the monthly" rentals.

As a consequence of the admission of the "Complaint In Intervention", petitioner deposited with the Clerk of Court of the Court of First Instance of Rizal, the following sums by way of rentals: .

October 27, 1971 P900.00
November 29, 1971 600.00
January 19, 1972 750.00
March 8, 1972 1,500.00

or a total of P3,750.00, which deposits are properly covered by official receipts.

On October 20, 1971, defendants in Civil Case No. 14880, filed with said Court, an "Omnibus Motion" in which they prayed that the complaint, as well as the Complaint In Intervention, be dismissed on the ground that the subject matter thereof could be better ventilated in the ejectment case filed by Juan Fabella against Bearcon Trading Co., Inc. (Civil Case No. 3979) then pending before the municipal court of Mandaluyong Rizal.

The court *a quo* under date of April 24, 1972 issued an "Omnibus Order", dismissing both the complaint and the complaint in intervention.

On May 27, 1972, petitioner filed its Motion to withdraw the sums it deposited, as "the order dismissing the ... case as well as the complaint in intervention without a resolution having been made as to the right of the plaintiff or the defendants to the rentals deposited by the intervenor, left the intervenor without any recourse but to apply for authority to withdraw the ... amount ... and turn over the same to the defendants in accordance with the understanding arrived at between the parties hereto". This was denied by Respondent in its order of June 23, 1972. The motion for reconsideration of petitioner was likewise denied by Respondent on July 15, 1972.

Hence this petition for *certiorari*.

The only issue is whether or not Respondent could authorize the withdrawal of the deposits considering that according to Respondent, the Court "has not ordered the intervenor to make any deposit in connection" with the case.

There is no question that in cases of consignation the debtor is entitled as a matter of right to withdraw the deposit made with the court, before the consignation is accepted by the creditor or prior to the judicial approval of such consignation. This is explicit from the second paragraph of Article 1260 of the new Civil Code which states that: "Before the creditor has accepted the consignation, or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force".

In the case at bar, the case was dismissed before the amount deposited was either accepted by the creditor or a declaration made by the Court approving such consignation. Such dismissal rendered the consignation ineffectual (*Bravo v. Barreras*, 92 Phil. 679, 681). Under such circumstances it was incumbent upon Respondent to have allowed the withdrawal by petitioner of the sums of money deposited by it with the Court.

Respondent nevertheless insists that the Court had no authority to authorize its withdrawal since it "has not ordered intervenor to make" the deposit. This contention ignores the fact that the deposit was made by petitioner as a consequence of the admission by the Court of its "Complaint In Intervention". It must be noted that the aforesaid deposit was made with and officially receipted by the Clerk of Court. The deposit was made pursuant to Article 1258 of the new Civil Code which states that: "Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, ...". It was therefore money received by the Clerk of Court pursuant to Section 6 of the Judiciary Act. (Rep. Act 296 as Amended). From the moment the deposit was made by petitioner, "the money remained under the control and jurisdiction of the court and the former could not recover it without an express order of restitution" (*Manajero v. Buyson Lampa*, 61 Phil. 66, 69). In the light of the aforesaid statutory provisions and jurisprudence We find no justification for Respondent's intransigent posture.

WHEREFORE, the orders dated June 23, 1972 and July 15, 1972 subject of the petition for *certiorari* are hereby set aside and Respondent directed to grant the withdrawal of the deposit in accordance with the foregoing. Without pronouncement as to costs.

Concepcion, C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Makasiar and Esguerra, JJ., concur.

Makalintal, J., is on leave.